

**UNITED STATES DISTRICT COURT**  
**FOR THE NORTHERN DISTRICT OF CALIFORNIA**  
**San Jose Venue**

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**Second Amended Petition for Summons for Person Under Supervision**

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**Person Under Supervision**

Jose Ruiz-Montes

**Docket Number**

0971 5:20CR00184-001 EJD

**Name of Sentencing Judge:** The Honorable Cynthia Ann Bashant  
United States District Judge  
Southern District of California

**Date of Original Sentence:** February 24, 2020

**Original Offense:** Count One: False Statement to Government Agency, 18 U.S.C. § 1001, a Class D Felony.

**Original Sentence:** Imprisonment term of time served, followed by one year supervised.

**Special Conditions:** \$100 special assessment; if deported, not reenter the United States illegally; mental health treatment; report all vehicles owned and operated to the probation officer; search; 150 hours of community service, and substance abuse testing and treatment.

**Prior Form(s) 12:** On April 14, 2020, The Honorable Cynthia Ann Bashant modified the client's supervised release terms to include a substance abuse treatment condition.

On April 30, 2020, jurisdiction was transferred from the Southern District of California to the Northern District of California and assigned to Your Honor.

On May 15, 2020, Your Honor issued a summons for possession of a controlled substance. A court date before the duty Magistrate Judge was set for August 3, 2020, at 1:30pm.

On July 14, 2020, an Amended Petition for Summons for Person Under Supervision was filed providing details to Charge One. The matter is currently set for an initial appearance before Your Honor on September 19, 2020, at 1:30 p.m.

**Type of Supervision**

Supervised Release

**Assistant U.S. Attorney**

Christopher Vieira (AUSA)

**Date Supervision Commenced**

February 24, 2020

**Defense Counsel**

Severa Keith (Appointed)

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### **Petitioning the Court**

#### **To take notice of the addition of Charge Two and order that Ruiz-Montes appear before the duty Magistrate Judge on October 15, 2020, at 10:30 a.m.**

I, Juan Flores, a Probation Officer employed in the United States District Court for the Northern District of California, solemnly affirm and declare, under penalty of perjury, that to the best of my information and belief, the facts set forth in this affidavit are true and correct. The factual affirmations made below are based on my personal knowledge, on official records or documents generated and maintained by my agency in the course of performing its functions, on official records or documents generated and maintained by other government agents or agencies in the course of performing their functions, or on information provided to me orally or electronically by employees or agents of other public agencies (information developed or acquired in the course of performing official agency functions).

<u>Charge Number</u>	<u>Violation</u>
One	There is probable cause to believe that the person under supervision violated mandatory condition number three that states he must not illegally possess a controlled substance. The client must refrain from any unlawful use of a controlled substance.
	<p>On May 5, 2020, the United States Probation Officer (USPO) received an email from the client's case manager. This email described an incident at the group home in which he lives. On May 4, 2020, the case manager arrived at the home to speak to the client's roommate. When he walked in, he noticed a strong odor of marijuana. The client was hiding in the closet but advised the case manager that he was changing. The case manager asked the client if he had been smoking marijuana, to which he stated he had not. The case manager proceeded to conduct a room search. In the client's laundry basket, a "makeshift bong" (made from a Coca-Cola plastic bottle), marijuana and a vape pen battery were found. The client denied that any of these items were his or that he had consumed marijuana.</p> <p>On May 5, 2020, the USPO arrived at the group home to discuss the previous day's incident. Initially, the client stated he had nothing to report, when confronted regarding the incident he denied being at the home at the time. After advising the client that probation wishes to help him and as such, he should be truthful, Mr. Ruiz-Montes admitted using marijuana. He stated he has trouble sleeping and has been using marijuana regularly to help him sleep. At this time, the client agreed to sign an Admission Report.</p> <p>On June 29, 2020, the USPO arrived at the group home to drug test the client. The drug test resulted in a positive for THC, which he denied using.</p>

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Evidence of this charge can be found in the chronological record and in the Admission Report both dated May 5, 2020, and Alere Toxicology Report specimen number B02442069.

**Two** **There is probable cause to believe that the person under supervision violated mandatory condition number three that states, in part, the client must refrain from any unlawful use of a controlled substance.**

**On September 24, 2020, during a home contact, Ruiz-Montes openly admitted to smoking marijuana on August 2020. He reported he could not remember the exact date, however, admitted it was after his last Court hearing (August 12, 2020). Further, on September 25, 2020, the client provided a urinalysis which resulted positive for THC.**

**Evidence of this charge can be found in the Admission/Denial report signed by Ruiz-Montes dated September 24, 2020, and the Alere Toxicology Report Specimen Number B02442048.**

The USPO previously requested a summons due to charge one and the following events.

On March 31, 2020, Mr. Ruiz-Montes contacted the USPO to advise he moved to Rosana Street, Gilroy, as he could no longer live at the other address due to his criminal background. On April 7, 2020, the client advised he moved again to East 7<sup>th</sup> Street, Gilroy, because he stated it was closer to his job. On April 10, 2020, his foster mother from the Rosana Street address contacted the USPO advising the client had stolen her identification and the keys to the home prior to leaving. She had evicted him as he was drinking at her home, and his boyfriend would stay over without asking for permission. She had also discovered he had also been evicted from the East 7<sup>th</sup> street address, got fired from his job for not going into work while he lived with her, and had been expelled from school for poor performance. Mr. Ruiz-Montes was contacted on the same day to request information regarding the incidents at the Rosana Street address which he adamantly denied.

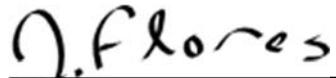
On April 15, 2020, he advised the USPO he moved again to Swanston Lane, Gilroy. On April 24, 2020, the USPO attempted contact with the client at his reported home. He advised he was at his friend's house in San Jose. Once the USPO arrived at his friend's home in San Jose, the client was not present. When called, he advised he was going to Walmart. The USPO arrived at Walmart and waited for the client for 20 minutes. Once he arrived, he stated he was late due to going to another friend's house. The client was not wearing a mask to enter the store and was admonished for not following the local rules of shelter-in-place orders. On April 25, 2020, the client contacted the USPO to advise he wanted to know when the USPO wished the client return home. He was admonished and advised he needed to go back home as soon as possible. On April 28, 2020, an administrative meeting was conducted with the USPO and the Supervisory Probation Officer, the client was reminded of his conditions of supervision, including being responsive and communicating his whereabouts with the USPO.

Based on the foregoing, there is probable cause to believe that Jose Ruiz-Montes violated the conditions of his Supervised Release.

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Respectfully submitted,



Juan Flores  
U.S. Probation Officer  
Date Signed: October 7, 2020

Reviewed by:



Sonia Lapizco  
Supervisory U.S. Probation Officer

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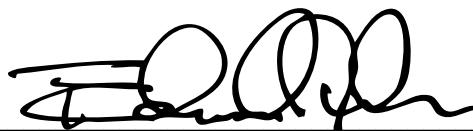
Having considered the information set forth above, the court finds there is probable cause to believe there has been a violation of the conditions of supervision and orders:

The Court takes notice of the addition of Charge Two, and orders that Ruiz-Montes appear before the duty Magistrate Judge on October 15, 2020, at 10:30 a.m.

Other:

October 7, 2020

Date



Edward J. Davila  
United States District Judge

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## APPENDIX

Grade of Violations: C

Criminal History at time of sentencing: I

	<b>Statutory Provisions</b>	<b>Guideline Provisions</b>
<b>Custody:</b>	Two years 18 U.S.C. § 3583(e)(3)	3-9 months USSG §7B1.4(a)
<b>Supervised Release:</b>	Three year, less any time in custody upon revocation 18 U.S.C. § 3583(h)	Three years, less any time in custody upon revocation USSG §7B1.3(g)(2)
<b>Probation:</b>	Not applicable	Not applicable